

# AT A GLANCE: 43 CFR 10.11 – Disposition of Culturally Unidentifiable Native American Human Remains

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This is a reserved section of the 1995 NAGPRA regulations, 43 CFR Part 10. NAGPRA, 25 U.S.C. 3006(c)(5&7), required the Review Committee to develop an inventory of culturally unidentifiable Native American human remains (CUI), and consult with the Secretary on regulations. The Review Committee database of CUI was launched in the fall of 2005 and currently includes 124,301 minimum number of individuals (MNI).

The final rule was published on March 15, 2010 and becomes effective on May 14, 2010. Comments on the rule will be accepted until May 14, 2010, and considered for possible amendments to the rule. The preamble to the rule addresses many related questions and issues.

## **Features of the Final Rule**

- A final denial of a request from a tribe or Native Hawaiian organization (NHO) for repatriation from tribe or disposition is final agency action (43 CFR 10.1).

- This rule takes the hold off culturally unidentifiable Native American human remains and moves forward with responsibility federal agencies and museums have for human remains in collections, which can be determined to be Native American, but cannot be culturally affiliated to a federally recognized tribe or NHO, given the totality of the circumstances (43 CFR 10.9).

- There is a civil penalty category #9, failure to transfer control after receipt of claim.

## **Sequence of Activity in the Final Rule**

- A museum or Federal agency must initiate consultation on the CUI (43 CFR 10.11(b)):

1. Within 90 days of a request to transfer control of CUI from a tribe or NHO,
2. With tribes/NHOs from whose tribal lands or aboriginal territory the remains were exhumed.

- Aboriginal occupancy can be shown by (43 CFR 10.11(b)(ii)): Final judgment of the Indian Claims Commission or United States Court of Claims; treaty; Act of Congress; or Executive Order

- The process for consultation includes information exchange (43 CFR 10.11(b)(3 or 4)), including:

1. to tribes-list of tribes/NHOs to be consulted, and known groups that may have shared group identity.
2. from tribes-contact person in tribe, geographic area of tribe's interest, known groups of interest, schedule.

- Notice of Inventory Completion will be for disposition based on connection to the site of exhumation

- Transfer of control may go to non-federally recognized Indian groups after requests/ interests of tribes resolved, using the process of request to the Review Committee and approval by Secretary of Interior.

## **Impacts to Existing CUI Inventories**

- The affirmative duty of museums and Federal agencies to consult with tribes, amend the CUI inventory to designate culturally affiliated human remains if reasonable, publish a notice, and transfer control (43 CFR 10.9) is unchanged.

- Unchanged are: FOIA protections, NAGPRA compliance does not require new science; the right of possession continues to apply; the Review Committee is available to make findings and resolve disputes.